

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION NO.30114 OF 2017

ORDER:

Heard Sri Subba Rao Korrapati, learned counsel for the petitioners, learned Government Pleader for Municipal Administration and Urban Development(TG) for the 1st respondent and Smt.Pingali Laxmi, learned Standing Counsel for the 2nd Respondent-Warangal Municipal Corporation.

2. According to the petitioners, one Sri Manda Bakkaiah @ Narasaiah owned and possessed the agricultural land admeasuring Ac.2.07 guntas in Sy.No.1765(old), 1282(new) in Fort Warangal Village, Warangal Rural Taluq and Warangal District. It is further averred in the writ affidavit that after the death of the said Narasaiah, the legal heirs viz., Manda Nagaiah, Manda Chandraiah, Manda Mohan executed a registered agreement of sale-cum-General Power of Attorney to the husbands of the petitioners herein in respect of an extent of 342 square yards for a valuable sale consideration of Rs.13,68,000/- vide document No.3700/2010, dated 01-07-2010 and delivered the possession of the said property. It is further averred that prior to 2010, their vendors and after 2010 husbands of the petitioners and thereafter the petitioners have been in possession and enjoyment of the property.

The petitioners herein claim to have made an application to the 2nd Respondent on 21-01-2015 seeking permission for construction of a shop for wholesale business in the above said land. By way of an order dated 23-02-2015, the 2nd Respondent rejected the said application on the ground that the 3rd Respondent claimed the said property.

3. Assailing the validity of the above said order, dated 23-02-2015 issued by the 2nd respondent rejecting the application said to have been submitted by the petitioners herein, the petitioners herein filed W.P.No.7090 of 2017 before this Court. This Court disposed of the said writ petition on 09-02-2017. Operative portion of the said order reads as under:-

“In those circumstances, without expressing any opinion, with respect to the respective contentions with regard to the title, the writ petition is disposed of directing the 2nd respondent to reexamine the total issue afresh by taking into consideration of the objections and documents filed by the petitioners and pass appropriate orders in accordance with the law, within a period of four weeks from the date of receipt of copy of this order. The 2nd respondent is also directed to furnish the objections and material placed by the 3rd respondent to the petitioners.”

4. According to the petitioners, thereafter they submitted a representation on 23-02-2017 to the 2nd Respondent-Municipal Commissioner, Warangal Municipal Corporation, Warangal requesting to furnish the copies of objections and documents filed by the 3rd Respondent along with title documents submitted by her, if any, in order to proceed further.

5. According to the learned counsel for the petitioner the questioned order is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India and also violative of principles of natural justice and also in utter disregard of the orders passed by this Court in W.P.No.7090 of 2015. In elaboration, it is further contended by the learned counsel for the petitioners that though this court specifically directed the 2nd respondent-municipal authorities to furnish the objections and material papers placed by the 3rd Respondent to the petitioners and despite representation made by the petitioners herein on 23-02-2017 to furnish the same, the 2nd Respondent authorities without supplying the same, passed the order under challenge.

6. On the contrary, it is vehemently contended by the learned Standing Counsel for the 2nd Respondent-Municipal Corporation, Warangal that there is no illegality nor there exists any procedural infirmity in the impugned action and in the absence of the same, the impugned action is not amenable for judicial review under Article 226 of the Constitution of India. It is further stated, on instructions, that though the Municipal Corporation authorities furnished the documents as per the orders of this court, no acknowledgment was obtained.

7. The information available before this court, therefore, manifestly discloses that when the petitioners herein approached this Court on an earlier occasion by way of filing W.P.No.7090 of 2017, this court disposed of the said writ petition, directing the municipal corporation authorities to re-examine the total issue

by taking into consideration the objections and documents filed by the petitioners herein and to pass appropriate orders in accordance with law. In the said order, this court also specifically directed the 2nd Respondent to furnish the objections and material placed by the 3rd Respondent to the petitioners herein. It is also not in dispute that pursuant to the said orders passed by this Court, the petitioners herein on 23-02-2017 submitted a written representation to the 2nd Respondent specifically requesting to furnish the authenticated copies of the objections and documents submitted by the 3rd Respondent along with title documents, if any, in order to proceed further. Except stating that the documents were furnished to the petitioners as per the orders of this court, there is absolutely no evidence on record to show that the petitioners herein were supplied with the documents as directed by this court. Therefore, in the considered opinion of this court the very action of passing the order without supplying the documents as directed earlier by this court can neither be countenanced nor approved by this Court and the said action is liable to be deprecated. It is patent violation of principles of natural justice also.

8. For the above reasons, the writ petition is allowed, setting aside the order passed by the 2nd Respondent-Municipal Commissioner, Warangal Municipal Corporation, Warangal vide proceedings No.HO/G2/30735/2015-17, dated 30-08-2017. However, it is open for the 2nd Respondent to pass orders afresh, after furnishing the documents as sought by the petitioners herein vide their representation dated 23-02-2015, in

accordance with orders of this court in W.P.No.7090 of 2017 after giving opportunity of hearing to all the stake holders including the petitioners herein as well as to the 3rd Respondent.

Miscellaneous Petitions pending, if any, in this writ petition shall stand closed.

A.V.SESHA SAI, J

07.09.2017
TSNR

